



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF TRAIAN-CONSTANTIN NICOLESCU v. ROMANIA

(Application no. 10311/03)

JUDGMENT

STRASBOURG

23 February 2010

FINAL

23/05/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Traian-Constantin Nicolescu v. Romania,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Josep Casadevall, *President*,

Elisabet Fura,

Corneliu Bîrsan,

Boštjan M. Zupančič,

Alvina Gyulumyan,

Egbert Myjer,

Luis López Guerra, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 2 February 2010,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 10311/03) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Romanian national, Mr Traian-Constantin Nicolescu (“the applicant”), on 28 January 2003.

The applicant died on 6 June 2005. His daughter, Ms Mariana Dinu, expressed her wish to pursue the application. For practical reasons, Mr Traian-Constantin Nicolescu will continue to be called “the applicant” in this judgment, although Ms Mariana Dinu is now to be regarded as such (see *Dalban v. Romania* [GC], no. 28114/95, § 1, ECHR 1999-VI).

2. The Romanian Government (“the Government”) were represented by their Agent, Mr Răzvan-Horațiu Radu.

3. On 10 July 2008, the President of the Third Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1929 and formerly lived in Slatina.

5. On 24 October 1991, the Slatina Local Commission responsible for the application of Law 18/1991 (“the local commission”) issued in

the applicant's favour an ownership certificate (“*adeverință de proprietate*”) for a plot of land measuring 2.13 hectares located in the city of Slatina, but did not put him into possession of the land.

6. The applicant brought administrative proceedings against the local commission, seeking to take possession of the land granted to him by the ownership certificate. On 19 January 1998, the Olt County Court allowed the action and ordered the local commission to enable him to take possession of the land on the original placement held by his father. That judgment became final.

7. In 2000, the applicant filed another action against the local commission, the Olt County Commission responsible for the application of Law 18/1991 (“the county commission”) and a natural person, D.E., seeking to take possession of the 2.13 hectares of land, to obtain the ownership title for that land and the partial annulment of an ownership title issued in favour of D.E. for the area of 0.75 hectares that should have been restored to him in accordance with the final judgment of 19 January 1998. The District Court of Slatina allowed the action on 12 February 2001. Appeals filed by the commissions and D.E. were dismissed by the Olt County Court on 27 September 2001. By a decision of 2 April 2002, the Craiova Court of Appeal allowed an appeal on points of law filed by the commissions, quashed the decision rendered in appeal and remitted the file to the Olt County Court for a fresh examination of the appeals. The appeals were again dismissed on 4 June 2002. On 23 September 2002, the Craiova Court of Appeal allowed the appeal on points of law filed by the local commission. It partially dismissed the action filed by the applicant with respect to the obligation of the commissions to authorise him to take possession of the land and to issue the ownership title, on the ground that the judgment of 19 January 1998 rendered in his favour had the force of *res judicata*.

8. By an interlocutory judgment of 2 December 2002, the Slatina District Court allowed the applicant's claim for the payment of 300,000 Romanian lei (ROL) in damages per day of delay until the enforcement of the final judgment of 19 January 1998.

9. In 2003, the applicant filed another action against the local commission seeking to obtain payment by the latter of damages for the loss of profit caused by the non-enforcement of the final judgment of 19 January 1998. On 7 November 2003, the Slatina District Court partially allowed the applicant's claim and awarded him 18,898,880 ROL. The judgment was upheld by Olt County Court on 26 November 2004.

10. On 31 November 2003, the county commission issued two ownership titles, but for other plots of land than those to which the applicant was entitled. The applicant lodged an action seeking to obtain the annulment of the ownership titles and new ownership titles in accordance with the judgment of 19 January 1998, namely on the

former placement. During the proceedings, on 6 June 2005, the applicant died and his daughter, Ms Mariana Dinu, expressed her wish to pursue the action. The Slatina District Court allowed the applicant's claim on 31 March 2006. It ordered the county commission to issue on behalf of the applicant's daughter an ownership title for 2.13 hectares of land on the former placements. The judgment became final.

11. Following the judgment of 31 March 2006, the local commission authorised the applicant to take possession of the land, a minute (*proces verbal*) being drafted to that effect on 3 October 2008.

12. On October 2008, the Slatina City Council forwarded to the Slatina Land Office (*Oficiul de Cadastru și Publicitate Imobiliară*) all the documents necessary for the issue of the ownership title in accordance with the judgment of 19 January 1998.

13. The proceedings for the issue of the ownership title are pending. So far the applicant's daughter has not received an ownership title.

II. RELEVANT DOMESTIC LAW

14. The relevant domestic law is summarised in the judgments of *Sabin Popescu v. Romania* (no. 48102/99, §§ 42-46, 2 March 2004) and *Drăculeț v. Romania*, no. 20294/02, § 29, 6 December 2007).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

15. The applicant complained that the non-enforcement of the final judgment of 19 January 1998 in his favour had infringed his rights guaranteed by Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention, which, in so far as relevant, read as follows:

Article 6 § 1

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

Article 1 of Protocol No. 1

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

16. The Government contested that argument.

A. Admissibility

17. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

18. The Government acknowledged that the applicant was entitled to enter into possession of 2.13 hectares of land in Slatina in accordance with the final judgment of 19 January 1998. It contended that the local authorities were not acting in bad faith and that the delay in enforcement was due to objective reasons. It contended that on 30 November 2003, an ownership title for a plot of land of 2.13 hectares was issued, but the applicant refused it on the ground that the land was not located on the former placement. It also noted that following the judgment of 31 March 2006, the local commission authorised the applicant to take possession of the land, a minute (*proces verbal*) being drafted to that effect on 3 October 2008. It added that the proceedings for the issue of the ownership titled are pending.

19. The applicant's daughter disagreed. She contended that despite all her efforts and requests addressed to all authorities she had not obtained the execution of the final judgment.

20. The Court notes that the judgment of 19 January 1998 authorised the applicant to recover his property. It thus conferred on the applicant a legitimate expectation of being able to take possession of the land referred to in those judgments and of subsequently obtaining title to the land, as provided by the internal legislation (see the relevant domestic law in *Drăculeț*, cited above, § 29).

21. Based on the documents submitted by the Government, the Court notes that the applicant's heir was allowed to take possession of the plot of

land of 2.13 hectares on the former placement as ordered by the 1998 and 2006 judgments.

22. However, in order for the applicant's daughter to fully enjoy the prerogatives conferred by the right of property over her land, she must have not only a *de facto* possession, but also an ownership title certifying her right. Having regard to the fact that the applicant's daughter has not received an ownership title, the Court therefore considers, in that regard, that although the authorities had an obligation to enforce court judgments, namely by allowing the applicant's daughter to take possession of the relevant land and by providing her with a document of title to her land in the instant case, the judgments of 19 January 1998 and 31 March 2006 remain partially unenforced to date. Those judgments are nevertheless still valid, no proceedings having been instituted under Romanian law for their modification or annulment before the domestic courts. Apart from enforcement, it is only by such an annulment or substitution by the courts with an equivalent obligation that the continuing situation of non-enforcement may come to an end (see *Sabin Popescu*, cited above, § 54).

23. The Court notes that, in the present case, the authorities have failed to take all necessary steps for the complete enforcement of the final judgments. It has frequently found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in cases raising issues similar to the ones in the present case (see, among others, *Sabin Popescu*, cited above, and *Dragne and Others v. Romania*, no. 78047/01, 7 April 2005).

24. Having examined the material submitted to it, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. There has accordingly been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

26. The applicant's daughter sought enforcement of the judgment of 19 January 1998, namely to be allowed to take possession of the 2.13 hectares of land and to receive ownership titles. She also claimed

2,130,000 Euros (EUR) for the loss of profit or any benefit from her possessions, representing the value of the rent she could obtain by renting the land for a period of ten years (10 Euros per square metre per year). In respect of non-pecuniary damage, she claimed EUR 4,000.

27. The Government noted that the applicant's daughter had already been allowed to take possession of her land and the proceedings for the issue of the ownership title had been initiated.

With respect to the amount requested for the loss of profit, they contended that granting such an amount would have a speculative character.

Further, they considered that the finding of a violation would constitute in itself sufficient just satisfaction for any non-pecuniary damage which the applicant may have suffered.

28. The Court reiterates that, where it has found a breach of the Convention in a judgment, the respondent State is under a legal obligation to put an end to that breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 32, ECHR 2000-XI).

29. The Court considers, in the circumstances of the case, that the *ad litteram* enforcement of the judgment of 19 January 1998 would put the applicant's heir as far as possible in a situation equivalent to the one in which she would have been if there had not been a breach of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. In this connection, the Court considers that the applicant's daughter has been enabled to take possession of the land specified in this judgment. Therefore, it holds that the respondent State is to provide the applicant's daughter with title in respect of that land.

30. As regards the amount of money alleged by the applicant's daughter for the loss of profit or any benefit from her possessions, the Court rejects this claim, taking into account on the one hand that it has ordered *restitution in integrum* as reparation under Article 41 of the Convention and on the other hand that granting a sum of money on this basis would be a speculative process, having regard to the fact that the profit from a possession depends on several factors (see *Luca v. Romania*, no. 1204/03, § 40, 13 May 2008).

31. The Court considers that the serious interference with the applicant's right of access to a court and to the peaceful enjoyment of his possessions had caused moral prejudice to the applicant. Making an assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant's daughter EUR 1,600 in respect of non-pecuniary damage.

B. Costs and expenses

32. The applicant's daughter also claimed the costs and expenses incurred before the Court with respect to the correspondence, without specifying a certain amount.

33. The Government noted that the applicant's daughter did not submit relevant supporting documents certifying a particular amount for the costs and expenses incurred and therefore, they requested the dismissal of this claim.

34. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the above criteria, the Court rejects the claim for costs and expenses in the proceedings before the Court.

C. Default interest

35. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention;
3. *Holds*
 - (a) that the respondent State shall ensure, by appropriate means, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the enforcement of the Olt County Court's judgment of 19 January 1998 by providing the applicant's daughter with an ownership title;
 - (b) that in any event, the respondent State is to pay to the applicant's daughter, within the same three months, the amount of EUR 1,600 (one thousand six hundred Euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

- (c) that the above amount shall be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
- (d) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's daughter's claim for just satisfaction.

Done in English, and notified in writing on 23 February 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President